(1945) 01 CAL CK 0024

In the Calcutta High Court

Ekbal Ahmed alias Nisar Ahmed and Others	APPELLANT
Vs	
Dr. Mahammad Maqsood alias Dr. Mohmed Maqsood Ahmed Quraishi and Others	RESPONDENT

Date of Decision : 17-01-1945

Acts Referred:
Provident Funds Act, 1925 — Section 3(2), 5(1)

Citation : AIR 1945 Cal 384

Hon'ble Judges : Ellis, J;B.K. Mukherjea, J

Bench : Full Bench

Judgement

B.K. Mukherjea, J.—The appellants before us are two minor sons of one Khalil Ahmed who was an employee of the Darjeeling Himalayan Railway and they applied through their maternal grandmother for succession certificate in respect of the provident fund money lying to the credit of the deceased in the Railway Provident Fund. The application was opposed by one Maqsood who is a cousin of the deceased and his contention was that as Khalil Ahmed had during his lifetime appointed him his nominee with regard to the provident fund money, he was entitled to the same u/s 5(1), Provident Funds Act (19 of 1925), in preference to the natural heirs of the deceased. The learned Judge accepted, though not without some hesitation, the Contention of the opposite party, and dismissed the application for certificate. The applicants have come up on appeal to this Court. It is not disputed that at the time when Khalil Ahmed started his provident fund account, he sent to the Secretary of the fund the name of Maqsood as the person to whom he desired the money to be paid in the event of his death. At that time, apparently, no son was born to him, but the fact remains that the nomination was not varied or altered by any subsequent nomination.

2. We are not really concerned with any question of title in a proceeding for succession certificate and the only point in controversy is as to whether the nominee can claim a preferential right in this matter over the natural heirs of the deceased. Mr. Das appearing on behalf of the appellants relied on Section 4(1)

(a), Provident Funds Act, read with Section 8(2) of the Act. u/s 4(1) (a) of the Act, the dependent of the depositor or subscriber shall be paid the whole or portion of the provident fund money if it vests on any such dependent u/s 3 of the Act. Section 3(2) of the Act provides inter alia that any sums standing to the credit of any subscriber to or depositor in the provident fund'' at the time of his decease and payable under the rules? of the fund to any dependent of the subscriber or depositor... shall vest in the dependent and shall be free from any debt or other liability incurred by the deceased or incurred by the dependent before the death of the subscriber or depositor. It is clear that in order that the appellants might claim the benefit of Section 3(2), Provident Funds Act, it is necessary to show that under the Provident Fund Rules of the Darjeeling Himalayan Railway, the amount standing to the credit of the deceased in the provident fund is payable to the dependent of the subscriber. Admittedly, there are no such rules, and consequently it must be held that Section 3(2), Provident Funds Act, is of no assistance to the appellants. On ''behalf of the respondent, reliance was placed on Section 5(1), Provident Funds Act. The sub-section reads as follows:

Subject to the provisions of this Act, but otherwise notwithstanding anything contained in any law for the time being in force or any disposition, whether testamentary or otherwise, by a subscriber to, or depositor in, a Government or Railway Provident Fund of the sum standing to his credit in the fund or of any part thereof, any nomination, duly made in accordance with the rules of the fund, which purports to confer upon any person the right to receive the whole or any part of such sum on the death of the subscriber or depositor, shall be deemed to confer such right absolutely, until such nomination is varied by another nomination made in like manner or is expressly cancelled by the subscriber or depositor by notice given in such manner and to such authority as is prescribed by those rules.

3. In the case before us, the depositor undoubtedly nominated the respondent as his nominee in accordance with: the form prescribed by the rules of the railway. administration, and the form purports to confer upon the nominee the right to receive the provident fund money standing to his credit at the time of his death. It seems therefore that as the present case does not come within Section 3(2), Provident Funds Act, prima facie the nominee is entitled to preference over the dependent, and the decision of the Court below must be deemed to be right. The appellants contended in the Court below that as the nomination under the provident fund rules was in the nature of a testamentary bequest, a Mahomedan was not entitled to leave to his nominee more than one-third of his assets. It was also argued that the Provident Funds Act could not override the personal law of the parties. We should not express any opinion on this point. As has been said already, these are not matters which come really for decision in a proceeding for succession certificate. If the parties want to raise any question of title, they would be entitled to do that in a properly framed suit. The result is that this appeal is dismissed. We direct that the parties will bear their own costs in this

Court and in the lower Court.

Ellis , J.

4. I agree.

